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A

# DISSERTATION

Concerning the

## EVIL NATURE AND FATAL CONSEQUENCE Of IMMODERATE *Anger and Revenge.*

To which is annex'd;  
A short Collection of the ancient  
*Jewish* and *Roman* LAWS, relating to  
Acts of Violence, Oppression, and Cruel  
Revenge.

Together with several  
Extracts from the *French, Danish, Swedish*  
and *English* LAWS, and some impartial Re-  
marks upon the Subject of MURDER and  
MANSLAUGHTER.

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By T. S.

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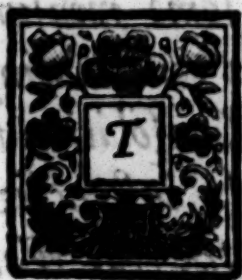
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# THE PREFACE.



*THE following Treatise being written as Matter of Amusement at leisure Hours, was design'd partly to instruct, as well as support the Mind under some great Affliction; and it was chiefly occasion'd by several Personal Injuries, which not properly falling under the Cognizance of the Common Law, it was not thought expedient or advisable to demand any just and equitable Reparation for them, the Consideration of which, joined with the urgent Reason and Necessity of supplying the Deficiency of the Law in some special Cases, has induced me to attempt the finishing this Performance; and considering I have now reduced it to this small*

# The PREFACE.

*Volume, which being carefully revis'd, and corrected; and having obtain'd the favourable Opinion and Approbation of certain worthy and learned Persons, recommending the useful Nature of the Subject, and the Advantage which might accrue to Human Society, by printing some Copies thereof; I resolv'd to take the present Opportunity of publishing the same; hoping, that as it has been in some measure beneficial and serviceable in contributing necessary Relief, and solid Consolation to the Author; it will be no less instructive and subservient in promoting the real Welfare and mutual Edification of others.*





A  
DISSERTATION  
Concerning the  
EVIL NATURE  
AND  
PERNICIOUS CONSEQUENCE  
OF  
*REVENGE, &c.*



Whensoever we reflect on the Original Frame of our Beings, and seriously consider the universal Depravity, various Passions, and innumerable Frailties of Humane Kind, there is nothing appears more evident, and 'tis generally allow'd, that the unreasonable and immoderate Desire of Revenge is the worst of all those heinous Vices to which our corrupt Nature is inclin'd : And since the irregular Gratification of cruel Malice, and ungo-

B                      vernable



venable Anger, has been usually attended in all Ages with many evil Accidents and Misfortunes, fatal and destructive to Mankind, ---those particular wise, and politick Nations, which have been most eminent and celebrated for their prudent Conduct, in ordaining Righteous Laws, and impartially distributing Rewards and Punishments; who have not only judg'd it necessary to inflict severe Penalties on the most Criminal Instances of this Nature, but likewise thought it worthy of their extraordinary Care and Vigilance, to restrain and suppress the first Motions of this stubborn and rebellious Passion; and accordingly have adapted peculiar Laws to the several Degrees of Guilt, and punish'd every Offence committed against them.

But before I proceed to illustrate this important Subject by Example, I shall endeavour previously to discover and shew the principal Causes of this heinous Vice, and that the most considerable Incentives to it are excessive

Pride and Luxury. Forasmuch as it is manifest, that all ambitious Desires and vain Affectation of Greatness and Superiority will seduce a Man to take wrong Measures of his Worth, and over-value his Person, swelling him with an unjust and groundless Conceit of his Parts and Abilities ; it makes him impatient and incapable of sustaining the least Contempt, of bearing any tolerable Affront, or remitting the least real or imaginary Injury. In like manner, as excessive Luxury contributes to enflame the Blood, so it corrupts and depraves the Mind, it irritates and disorders the Animal Spirits, and renders them liable to ill Impressions, and apt to be transported to outrageous Fury by every cross Event or slight Provocation ; at which time, so long as Reason is subdu'd and enslaved, and while Passion reigns in its stead, all natural and tender Sentiments of Humanity will be in Danger of being wholly extirpated, and entirely destroy'd by the fierce Flames of implacable Anger and direful Revenge.

In order to prevent the ill Effects and unhappy Consequence of these and other Vices so prejudicial to Humane Society ; the most civiliz'd Nations in *Europe* have establish'd certain Laws, which are originally derived in a great measure from the ancient Model of the *Roman* or *Jewish* Government. But since it is more difficult to make a true Collection of the *Roman* Laws and Statutes, than the former, not only by reason of the distant Time in which they were first written, but for want of some authentick Records, which were lost during those manifold Revolutions and various Events of War which that glorious Empire and Kingdom underwent : Whereas the *Jewish* Laws have been preserv'd by Divine Providence, and carefully transmitted to Posterity, notwithstanding the Dissolution of their Government, and Dispersion of their Tribes throughout the World ; and considering a complete Formulary of these Divine Laws was composed by the



the immediate Order and Appointment of God.

For this Reason chiefly, I shall transcribe from the inspired Writings of *Moses*, and other Historical Records of the *Jews*, such material and important Passages as are most requisite and correspondent with the principal Design of this Discourse.

And in the first place, I think it necessary to be observ'd and premis'd, that all peculiar Acts of Violence procuring and causing either wilful Manslaughter, or deliberate Murder, were equally punish'd with Death. And whereas two or three Judges were thought sufficient to examine and try lesser Crimes, in order to punish all heinous and Capital Offences, there was appointed an \* Additional Number of Judges, consisting of the chief Elders and Officers of the People, never less than twenty, and sometimes more, in Proportion to the difficult and in-

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\* See the *History of Josephus*, and a *Continuation of the History of the Jews*, by Dr. Cxull.

tricate Circumstances of the Cause, which was try'd and determin'd by their final Award.

Deu. xvii.  
6.

And whensoever their Votes happen'd to be equal, the President had the Casting Voice. In which Courts of Judicature, there was always shewn such a tender Regard for the Preservation of the Lives of the Innocent, that none was condemn'd to die, but by the Attestation of two living Evidences; and the Testimony of Slaves, \* and those base ignominious Persons, who were justly suspected of Perjury, was rejected.

The following ABSTRACT of the *Jewish* Laws, relating to Cruelty and Revenge, is taken from the Sacred Books of *Moses*.

Exodus  
xxi. 12.

*Whosoever smiteth a Man, so that he die, shall surely be put to Death.*

*If a Man come presumptuously upon his Neighbour, to slay him with Guile, he shall be taken from the Altar, and surely die.*

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\* See the *History* of Josephus.

And if he smite him with an Instrument of Iron, so that he die, he is a Murderer; the Murderer shall surely be put to Death.

And if he smite him with throwing a Stone, wherewith he may die, and he die, he is a Murderer; the Murderer shall surely be put to Death.

Or if he smite him with a Hand-Weapon of Wood, (wherewith he may die) he is a Murderer, he shall surely be put to Death; the Revenger of Blood himself shall slay the Murderer; when he meeteth him, he shall slay him.

But if he thrust him suddenly without <sup>Numb.</sup> Enmity, or have cast upon him any thing <sup>xxxv. 16.</sup> without laying of Wait, seeing him not, and cast it upon him that he die, and was not his Enemy, nor sought his Harm, then the Congregation shall judge between the Slayer and Revenger of Blood, according to these Judgments: The Congregation shall deliver the Slayer out of the Hand of the Revenger of Blood; and the Congregation shall restore him to the City of his Refuge, and he shall abide in it to the Death of the High Priest, which was anointed with Holy Oil; but after the Death of the High Priest,



*Priest, he shall return into the Land of his Possession.*

*Whoso killeth any Person, the Murderer shall be put to Death by the Mouth of two Witnesses; but one Witness shall not testify any Person to cause him to die.*

*Moreover, you shall take no Satisfaction for the Life of a Murderer which is guilty of Death, but he shall surely be put to Death.*

*And ye shall take no Satisfaction for him that is fled to the City of Refuge, that he should come again to dwell in the Land, until the Death of the High Priest. So ye shall not pollute the Land wherein ye are, for Blood defileth the Land; and the Land cannot be cleansed of the Blood that is shed therein, but by the Blood of him that shed it.*

*He that smiteth his Father or his Mother, shall surely be put to Death.*

*And if Men strive together, and one smite another with a Stone, or with his Fist, and he die not, but he keepeth his Bed; if he rise again, and walk abroad upon his Staff, then shall he that smote him be quit; only he shall pay for the Loss*

*Loss of his Time, and shall cause him to be thoroughly healed.*

*He that killeth a Beast, shall make it good, Beast for Beast.* *Levit. xxiv. 20.*

*And if a Man cause a Blemish in his Neighbour, as he hath done, so shall it be done unto him, Breach for Breach, Eye for Eye, Tooth for Tooth; as he hath caused a Blemish in a Man, so shall it be done unto him again.*

*An ABSTRACT of the Law against Violence, taken from the History of Josephus.*

Let no Man oppress the Stranger, but set direct the ignorant Traveller in his Way if he wander, without hindring him in his Necessity, or misleading him in his Journey.

If a Man be struck in a Quarrel, and it be not with a Weapon, let him that struck him be presently punish'd, by receiving the like Number of Blows as he hath given; but if he be carry'd into his House, and lie sick of it divers Days, and in the End die thereof, he that struck him shall not be punish'd

nish'd as a Murderer ; and if he escape, and during the Time of his Sicknes hath been greatly hindred, then let him that struck him pay the Charges of his Sicknes during the Time he kept his Bed.

*Exod.*  
xxi. 22.

He that with his Foot shall strike a Woman with Child, if the Woman shall miscarry, he shall be by the Judges amerced in a Sum of Money, for that he hath lessened the Number of the People, by the Loss of him or her that is dead in the Mother's Womb. Let him likewise be condemned to pay a Sum of Money unto the Husband ; but if the Woman die of the Stroke, he that offer'd the Violence shall be punish'd with Death ; because the Law justly requireth that Life shall be satisfy'd with Life.

Let not any one among the *Israelites* use any mortal Poison, or Drug, that may do Hurt to any Man ; and if any be found with such things about him, let him die ; because it is just that he suffer the Evil which he had prepared for another.

If



## [ II ]

If any Man have an Ox that striketh with his Horn, let him kill him ; and if the said Ox striketh or killeth any Man in the Field, or elsewhere, let him be stoned to Death, and no Man eat of the Flesh thereof ; and if it be proved that the Master hath heretofore known the Quality of the Beast, and hath not taken Order, he shall do no Harm ; let him also be put to Death, as being the Author of the Murder committed by the Beast.

But if the said Ox kill a Slave, Male *Exod.* or Female, he shall be stoned, and the *xxi. 28.* Owner thereof shall pay thirty Sicles to the Master of the Slave that is slain.

Whosoever hath maimed any Man, or pulled out his Eye, let him in like manner be maimed or blinded, being deprived of the same Member of his Body wherewith he hath deprived another Man, except he that is maimed had rather have a Pecuniary Amends ; for the Law leaveth it to the Election of the Offended to estimate his Injury ; and if he will be more severe, he may.

From this short Collection, it may be clearly seen what just and severe Penalties the *Jewish* Legislators have provided against all flagrant Acts of Cruelty and Revenge, and how impartially they were executed. As the greatest Stress was laid upon the most necessary and fundamental Points of the Moral Law, which was never dispensed with, nor the Penalty remitted in any considerable Instance, to any Person whatsoever; so neither did they omit to extend their vigilant Care and Inspection to check and controul the least Fault of so malignant a Nature, and dangerous Tendency, to disturb the Peace and Welfare of Mankind. By consulting their particular Records, it appears, that malicious Slander and Defamation were severely punish'd, more or less, in Proportion to the Dignity of the Person that was defam'd; sometimes with a Pecuniary

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\* See the *Continuation of the History of Josephus*, by Dr. Crull.

Fine, and sometimes with Excommu-  
 nication.

The Penalty annexed to a Blow, or smiting a Person on the Cheek, was a Fine of 200 Zusees; and if repeated a second Time, was fined with 400 Zusees, which, according to the Computation of the Learned \* Interpreters of the *Hebrew* Language, amounts to the full Value of Ten Pounds *English* Sterling, or thereabouts. Whoever was the Aggressor in any Quarrel, and struck a Freeman, by the || *Roman* Law of the twelve Tables, was fined Twenty five *Asses*, and this Penalty was made more severe, and augmented in Proportion to the Degree and Quality of the Person who received the Assault; and he that struck a Senator, was punished with Banishment. But since the Christian Religion has been established, it is generally objected, that this rigorous Way of inflicting Penalties, according to the

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\* See Dr. Lightfoot and Dr. Whitby's Comment on S. Matth. || See Kennet's *Roman Antiquities*.



strict Tenor of the fore-mentioned *Jewish* Laws, is inconsistent with the milder Dispensation of the Gospel, which does in plain and express Terms, and in an eminent Degree, recommend and inculcate mutual Patience and Meekness, and does forbid its Disciples to repel Force with Force; exhorting them to overcome Evil by passive Courage, and generous Returns of sincere Kindness and Benevolence, instead of gratifying their peevish Anger and unreasonable Desire of Revenge. And it must be acknowledged as a sacred and undoubted Truth, that the *Messias*, in his first Sermon on the Mount, (partly to exalt the Duties of Patience and Forbearance to the highest Pitch and Perfection, and partly to prepare the Apostles for those cruel and bitter Sufferings, to which the Profession of the Christian Religion would expose them) did strictly enjoin them to endure Acts of Oppression and Violence with submissive Resignation; and likewise restrained them from taking those Advantages, which

which the Law of Retaliation (in all ordinary Cases to the injured Person) did allow. This appears evident from those Words of our Saviour in S<sup>t</sup> *Matthew's* Gospel; *Ye have heard, that it hath been said by them of old time, an Eye for an Eye, and a Tooth for a Tooth; But I say unto you, Resist not Evil, but whosoever smite thee on thy Right Cheek, turn to him the other also.* At the same time 'tis observable, that the great Author of the Christian Institution did more peculiarly recommend this Divine Precept, (containing an Indulgence of free Pardon and forgiving Wrongs) at the first Promulgation of the Gospel. And as it seems agreeable to the usual Custom of good and merciful Princes, commencing and introducing their just and peaceful Government, by granting Acts of Oblivion, and pardoning Offences; so the Saviour of Mankind did introduce his Spiritual Kingdom, by commanding the utmost universal Love and Charity, by softning the harsh Rigour of Laws, and remitting in several Instances the Penalties

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Penalties thereof. From whence it follows, and may be inferr'd, that the foresaid Law of Retaliation, in some extraordinary Cases, and at certain Times, for wise Ends and gracious Purposes, has been, and may be suspended, but never was repeal'd or abolish'd.

There is another Objection which is alledged against this important Part of the *Mosaick* Institution, that supposes a Retaliation of Injuries, according to the severe Injunction and Penalty thereof, in some remarkable Cases utterly impracticable; since there can be no adequate Proportion between the Damage which one Person sustains by the Loss of any Limb, or other Part of his Body, who gets much Profit, and obtains a competent Livelihood, by the constant Use and Exercise of it; and the same Loss sustained by another, who makes but small Use thereof, and to whom it is less Profitable. But the fore-named Objection may easily be refuted, by distinctly considering, that the extraordinary



dinary Nature of such a stated Case,  
 does not render the Law impracticable,  
 but only implies the Necessity of mak-  
 ing some Alterations in relation to the  
 Penal and Excutive Part of it. Thus,  
 for Instance, altho' it should be al-  
 low'd that Persons included within  
 the Case above-mention'd, ought not  
 to be punished in that special Manner  
 which the strict Letter of the Law re-  
 quires; nevertheless, they neither are,  
 nor can be exempted from a suitable  
 and equitable Punishment. Upon such  
 a peculiar Emergency, it is expedient  
 and necessary, that when extreme  
 Right cannot be administred and exe-  
 cuted on the Offender, to have Re-  
 course to Commutative Justice, which  
 imports and signifies an Exchange of  
 one Penalty for another; a Corporal  
 Punishment for a Pecuniary Fine;  
 Imprisonment, Disgrace, and Banish-  
 ment, or otherwise, as the Legislators  
 shall deem proper and fit to be  
 awarded. And furthermore, to vin-  
 dicate and clear this eminent Branch  
 of the Law from all other needless

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Objections,



Objections, 'tis requisite to be observed, and comes next to be considered, that it is Part of those Moral Precepts which are founded in the true Nature, and unchangeable Property of Wisdom, Justice and Equity ; and therefore the necessary Duties and useful Offices, which are closely connected with, and inseparably join'd to the strict Observance of it, are not to be accounted as temporary and transient, as to their Duration ; but must continue constantly to be such, as they really are, and so will always remain in full Force, and of perpetual Obligation.

And as the contrary Practice of dispensing with this Law is irreconcilable with several other Texts and Passages of Scripture, and with the main End and primary Intention of Religion in general ; so it would afford an Opportunity of committing frequent Acts of Injustice and Impiety, without Controll or Exemplary Punishment ; and consequently it would give Access to such a Torrent of flagitious Crimes and cruel Outrages, as  
would

would continually disturb, and entirely overwhelm the World with the greatest Disorder and utmost Confusion.

I should now proceed in the next place, pursuant to the proper Method, and chief Design of this Discourse, to give a just and true Account of the *Roman* Laws relating to this Subject; but as it would require no ordinary Stock of Criticism to explain their Words; and as the Knowledge of them is not so useful as the former, I shall only insert in this Place a short Extract of their Laws concerning Oppression and Violence, which I have collected from the late ingenious and learned Mr. *Basil Kennet's Roman Antiquities*, and which is express'd in the following Manner:

*Leges de Vi.*

*Plautia*, or *Plotia Lex*; the Author *P. Plautius*, Tribune of the Commons, *A. 675*, against those that attempted any Force against the State or Senate, or used any Violence to the Magistrates, or appeared arm'd in Publick

upon any ill Design, or forcibly expell'd any Person from his lawful Possession.

The Punishment assigned to the Convicted, was *Aqua & Ignis interdictio*, which signifies *the forbidding the Use of Water and Fire*; which being necessary for Life, the condemn'd Person was obliged to leave his Country, and suffer Banishment.

*Clodia Lex*; the Author *P. Clodius*, Tribune of the Commons, *A. 695*, ordaining, that all should be brought to their Tryal, who had executed any Citizen of *Rome*, without the Judgment of the People, or the Formality of a Tryal.

The Author of this Law being a Mortal Enemy of *Cicero*, level'd it particularly against him; who in the Time of the *Catilinarian* Conspiracy, for the greater Expedition and Security, having taken several of the chief Parties concern'd, first imprison'd, and afterwards executed them, only on the Decree of the Senate.

*Pompeia*



*Pompeia Lex*; the Author Pompey the Great; in his third Consulship, A. 701, it was directed especially against the Authors of the Riot, upon the Account of *Claudius* and *Milo*, in which one of the *Curia* had been set on Fire, and the Place of *Lepidus* the *Inter-rex* assaulted by Force. This Law introduced a much shorter Form of Judgment than had been formerly used; ordaining, that the first three Days should be spent in hearing and examining Witnesses; and then allowing only one Day for the two Parties to make their formal Accusation and Defence, the first being confined to two, and the other to three Hours.

*Of the Roman Punishments.*

The accurate *Sigonius* has divided the Punishments into Eight Sorts, *Damnum*, *Vincula*, *Verbera*, *Talio*, *Ignominia*, *Exilium*, *Servitus*, *Mors*.

*Damnum* was a peculiar Fine set upon the Offender, according to the Quality of the Crime. *Vincula* signifies the guilty Person's being condemned

demned to Fetters, and Imprisonment, of which they had many Sorts.

*Verbera*, or *Stripes*, were inflicted either with Rods, (*Virgæ*) or with Battoons, (*Fustes*); the first commonly preceded Capital Punishments, properly so called; the other was most in use in the Camp, and preceded Military Discipline.

*Talio* was a Punishment by which the guilty Person suffered exactly after the same Manner as he had offended, as in Cases of maiming, and the like: Yet *A. Gellius* informs us, that the Criminal was allowed the Liberty of compounding with the Person he had injured; so that he needed not suffer the *Talio*, unless he voluntarily chose it.

*Ignominia* was no more than a Publick Shame, which the offending Person underwent, either by vertue of the *Prætor's* Edict, or more commonly by order of the *Censor*. This Punishment, besides the Scandal, took away from the Party, on whom 'twas inflicted, the Privilege of bearing any Office,

Office, or almost all other Liberties of a *Roman Citizen*.

*Relegatio* was a sort of Banishment, by which the condemned Person was obliged to change his Country for a set Time, or for ever; but never lost his Estate or Goods, nor the Privilege of Citizens.

*Deportatio*, or Transportation, differ'd from the former in these Respects; That whereas the *Relegati* were only condemn'd to Banishment, but lost neither their Estate nor Goods; On the contrary, the *Deportati* were always deprived of their Estate and Goods, and condemned to suffer perpetual Banishment, being accounted dead in Law.

Of the Capital Punishments, or such as reached the Offender's Life.

The chief of these were, *Percussio*, *Securi*, *Strangulatio*, *Præcipitatio de Robore*, *Dejectio de Rupe Tarpeia*, *in Crucem Actio*, and *Projectio in Profluentem*.

The first was the same as Beheading with us. The second was perform'd in Prison, as in *Turky*. The third and fourth



fourth were a throwing the Criminal headlong from that Part of the Prison called *Robur*, or from the highest Part of the *Tarpeian Mountain*.

The fifth Punishment, namely *Crucifixion*, was seldom inflicted on any but Slaves, or the meanest of the Commons: Yet we find some Examples of a different Practice; and *Suetonius* particularly relates of the Emperor *Galba*, that having condemned a *Roman Citizen* to suffer this Punishment for poisoning his Ward; the Gentleman, as he was going to Execution, made a grievous Complaint, that a Citizen of *Rome* should undergo such a servile Death, alledging the Laws to the contrary. The Emperor hearing his Plea, promised to alleviate the Shame of his Sentence, and ordered a Cross much larger, and more neat than ordinary, to be erected, and to be washed over with white Paint; that the Gentleman, who stood so much on his Quality, might have the Honour to be hang'd in State.

*Projectio*

*Projectio in profluentem*, was a Punishment proper to the Crime of Parricide, or the Murder of a near Relation: The Person convicted of this unnatural Guilt, was immediately hooded, as unworthy of the common Light. In the next place, he was whipt with Rods, and then sow'd up in a Sack and thrown into the Sea; or, in Inland Countries, into the next Lake or River. Afterwards, for an Addition to the Punishment, a Serpent used to be put into the Sack with the Criminal; and by Degrees, in latter Times, an Ape, a Dog, and a Cock. The Reason of the Addition of the living Creatures is thought to have been, that the condemned Persons might be tormented with such troublesome Company, and that their Carcasses might want both Burial and Rest.

Besides the Punishments mention'd by *Sigonius*, who seems to consider the Roman People as in a free State, we meet with abundance of others either invented or revived in the Times

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of



of the Emperors, and especially in latter Ages.

Among these, we may take Notice of three as the most considerable, *ad Ludos*, *ad Metalla*, *ad Bestias*.

By the former, the convicted Persons (commonly call'd Slaves) were obliged to engage with the wild Beasts in the Amphitheatre, and sometimes to perform the Part of Gladiators, and satisfy Justice by killing each other.

*Ad Metalla*, or condemning to work in the Mines. *Suidas* supposes this Punishment to be invented by *Tarquinus Superbus*; but we rarely find it mention'd till the Times of the later Emperors, and particularly in the Histories of the Persecutions of the Christians, who were usually sent in great Numbers to this laborious and slavish Employment.

The throwing Persons to wild Beasts, was never put in Execution but upon the vilest and most despicable Malefactors, in Crimes of the highest Nature;



Nature; and these were properly  
term'd *Bestiarii*.

After this brief Collection of the  
ancient *Roman* and *Jewish* Laws, it  
may reasonably be expected, and it  
naturally follows of course, that I  
should, in the next place, exhibit  
some particular Account of Modern  
Laws, and what effectual Measures  
have been taken by the prudent Legis-  
lators to suppress the many grievous  
Irregularities of this heinous Vice,  
which is the Subject of the present  
Discourse, and prevent the dismal  
Consequences of gratifying the unruly  
and pernicious Passion of *Revenge*.

And whereas it is universally al-  
lowed by all unprejudiced Persons,  
that no wiser Scheme or better Regu-  
lation could be devised, effectually to  
restrain and extirpate all Criminal  
Disorders of this destructive Nature  
and Quality, than the *French* King's  
Edict against Duelling, lately pub-  
lish'd at *Paris*; and since this excellent  
Law is so much celebrated for strict

Justice and Impartiality, I shall extract several Articles from the said Edict, transcribed in the following Order:

### ARTICLE I.

The Ordinances of the Kings, our Predecessors, especially the late King's Edict of the Month of *August* 1679, his Declarations of the 14th of *Dec.* in the same Year, and the 28th of *October* 1711, against the Practice of Duels, shall be executed in all Points according to their Form and Tenor.

II. Our Will is, conformably to the XVIIIth Article of the said Edict of the Month of *August* 1679, That all Gentlemen, Military Persons, and others our Subjects, of what Quality or Condition soever, having Right to carry Arms, and between whom there shall happen Contention and Quarrel, upon what Subject soever, so that either the one or the other shall think himself offended, shall be respectively obliged to give Notice of it to our Cousins the Marshals of France, or other Judges

Judges of Points of Honour, that Measures may be therein taken suitable to the Exigency of the Case.

III. If Persons fall out and quarrel, and do not acquaint the Marshals of *France* with the same, or other Judges of Points of Honour, but meet and proceed to Combat, our Will is, that upon Proof made of the said Quarrel, they shall both be punish'd with Death, as being guilty of the Crime of Duelling.

IV. And in case by the Account given of their Quarrel in our afore-said Cousins the Marshals of *France*, there appears Proof of Aggression on either part, and it be clearly evinced that the Rencounter was not premeditated, the Aggressor shall be punish'd with Death; provided that the Person who was attack'd kept himself within Bounds of lawful Defence.

V. We command that the Edict of December 1704, establishing Penalties against



against the Officers of the Robe, and others who shall committ Facts or Outrages prohibited by the Ordinances, together with the Regulations of the 22d of *August* 1653, shall be executed according to their Form and Tenor.

VI. Those who shall be under strong Suspicion of having committed the Crime of Duelling, shall not be acquitted, till upon a fuller Information gained within the Space of one Year ; during which time, they shall be kept in Prison.

VII. We require all our ordinary Officers of Justice, upon Pain of Suspension, to give Information of Quarrels, Outrages, and Insults, of which they shall have Notice or Cognizance any ways whatsoever, and to send their Verbal Process and Information to our Cousins the Marshals of France, to be by them executed against the Guilty, according to the Rigor of

of the said Edict, and conformable to the aforesaid Regulations.

VIII. And since the Penalties enjoyn'd by the said Regulations have not proved sufficient hitherto to stop the Course of such Disorders, we command our Cousins the Marshals of *France*, and other Judges of Points of Honour, to inflict such Penalties, according to the Exigency of the Case, as they shall think proper, over and above those already enjoyn'd in the said Regulations. And our Will is, that he who shall strike another, let the Case be what it will, shall be punish'd with Degradation of Arms, Personal Nobility, and fifteen Years Imprisonment; and shall not be released after that Term, except by virtue of our Order, given by Advice of our said Cousins the Marshals of *France*.

IX. And to the end that our Subjects may be yet farther assured of executing our Intentions according to the

the present Ediēt, and those of the Kings our Predecessors, we swear by the Faith and Word of a King, never to exempt any Person, for the future, from the Rigor of the aforesaid Ediēt, upon any Cause or Consideration whatsoever. And that no Pardon or Discharge shall be granted by us to Persons convicted of the said Crime of Duelling, we expressly forbid all Princes and Lords attending upon our Royal Person, under Pain of incurring our Indignation, to use any kind of Prayer or Solicitation in Favour of Persons guilty of the said Crime. We likewise give in Command to our Loving and Faithful Counsellors, and to all other our Officers and Justices, that they cause this our Ediēt to be read, publish'd, and register'd, and its Contents strictly kept and observ'd, according to its Form and Tenor; and to the end it may be firmly establish'd to Posterity, we have caused our Royal Seal to be put to these Presents.

Given



*Given at Versailles, in the Month of February, and in the Year of our Lord, 1723. and in the Eighth of our Reign.*

Sign'd,

**LEWIS.**

And lower,

By the King's Command,

*Phelypeaux.*

*Fleuriau.*

Soon after the Publication of this Edict, the following Declaration was printed at *Paris*, directing Penalties for Reparation of Honour, on Occasion of Affronts and Menaces between Gentlemen and others:

I. That upon Offences given without Provocation, by injurious Words, such as Blockhead, Coward, Traytor, or the like, if not retorted by more severe Repartees; the Giver of such ill Language shall be condemned to six Months Imprisonment, and to ask Pardon of the offended Person before

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Commitment, in the Manner specify'd in the Vllth Article of the Regulation made by our Cousins in the Year 1653.

II. If the offended Person replies with such like affronting Language or stronger, he shall suffer three Months Imprisonment, without having Pardon ask'd of him by the Aggressor; who, nevertheless, shall have no Abatement of his six Months Imprisonment.

III. Giving the Lye, and threatening with Hand or Cane, by Words or Gestures, shall be punish'd with two Years Imprisonment; and the Aggressor shall, before Commitment, ask Pardon of the Person affronted.

IV. In case giving the Lye, or threatening to strike, are return'd by Blows, either with the Hand or Cane; the Person that gave the Lye, or threatned, shall be punish'd as the Aggressor with two Years Imprisonment;

ment; and the Striker shall incur the Penalties specify'd in our Edict of February last. This we give in Command to our Faithful Counsellors holding our Court of Parliament at Paris, requiring them to cause these Presents to be read, publish'd, and register'd; the Contents thereof to be strictly observed according to its Form and Tenor.

Given at Versailles, the 12th of April, in the Year of our Lord 1723, and in the Eighth Year of our Reign.

Sign'd

LEWIS,

And lower,

Phelypeaux.

The following A B S T R A C T of the Danish Laws, is taken from the Learned Mr. M--l---th's Account of Denmark, as it was in the Year 1692.

He begins with this good Character of them in general, That for Justice,



Brevity, and Perspicuity; they exceed all that he knows in the World: They are grounded upon Equity, and are all contained in one Volume in Quarto, written in the Language of the Country, with so much Plainness, that no Man, who can write or read, is so ignorant but he may presently understand his own Case, and plead it too, if he pleases, without the Assistance of Counsel or Attorney. Here is none of that Chicane to be found, which destroys and raises so many great Estates in *England*; a very few Advocates do the Business of all the litigious Persons in these Kingdoms; neither are their Fees Arbitrary or Exorbitant; no Suit of what Importance soever hangs in Suspense longer than one Year and a Month; since a Man may go through all the Courts, and have Execution done within that Time, unless he be wanting to himself.

In the ordinary Proceedings between Man and Man, there are three Courts; every one of which has a Power to give a Definitive Sentence, and

and must acquit or condemn ; yet there lies an Appeal from the Lower to the Higher ; and if the inferior Judge has wilfully vary'd from the positive Law, the Party wronged has Damages given both from the Judge and his Adversary : Here is no Removal of Actions from one Court to another, where the Parties begin all again, but by way of ordinary Procedure from the Lower to the Higher. And that no Clerk may have it in his Power to pick any Man's Pocket, by filling up many Sheets of Paper, there are Limits set, beyond which no Man is obliged to pay. Every one may plead his own Cause that pleases. However, it is the King's Order, that the Magistrates take Care to have one or more Advocates, (such as they approve of) who are to plead for the Poor, and for such as cannot plead for themselves. Upon the whole Matter, the Charges of the Law are very easy, since a Complaint may go through the three Courts for fifty six Dollars, which is less than twelve Pound Sterling.

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In Criminal Matters, a great Severity of Justice is practised. You never hear of any Person guilty of the Crime of Treason against the King: The Government has riveted it so fast upon the Bottom it now stands, that no body offers so much as to wag the Tongue against it. There are no Clippers or Coiners; no Robbers on the Highway, nor House-Breakers. The most usual Capital Crimes are Manlaughter and Stealing. Execution is done upon Offenders by beheading them with a Sword at one Stroke very dextrously. The Head's-Man, though infamous by his Place, is commonly rich, having other advantageous Employments, that no body else dares undertake.

*A short Account of the Laws of Sweden, taken from the late Learned Bishop of London's Description of that Nation and Country: Printed in the Year 1694.*

The Laws of Sweden were anciently as various, as the Provinces were numerous; each of which had Statutes  
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and Customs peculiar to itself, enacted as Occasion required, by the *Lagbman* or Governor of the Province, who was chosen by the People, and invested with great Authority, especially while the Kingdom was Elective; his Suffrage concluding the Province he governed. This Variety was attended with great Confusion, for Remedy whereof, about fourscore Years ago, one Body of Laws was compiled for the whole Kingdom. The Laws are so few, and conceived in such general Terms, that in most Cases they need the Assistance of the Civil Law: And after all, the final Decision depends much upon the Inclination of the Bench; which, in a poor Country, where Salaries are small, is often fill'd with such as are of weak Parts, and subject to Corruption. The Effects of this would be more visible, if each Superior Court did not keep a Check upon the Lower, and the King's Court of Revision over-awe them all; to which all Civil Causes, importing the Sum of seventy Pounds, are



are appealable. In this Supreme Court his Majesty very frequently sits, with great Patience and Application; and in seven Years time, has determined more Causes, than the Senators did in twenty Years before.

The Courts of Justice inferior to this are of three Degrees; of the lowest Degree there is one in each Corporation, as also in each District, whereof every Province contains several, some above twenty. In the former Cities an Alderman, or Counsellor presides, and has some of his Brethren for Assistants; in the latter, the Governor of the Territory with a standing Jury; his Court is ambulatory, and usually kept near, or upon the Place where the Fact or the Trespas was committed.

In these Courts Examinations are taken, and Matters, not exceeding forty Shillings, are determined; the rest transmitted to the next Superior Court, of which, in every Corporation there is one, where the Burgo-master is present, and the Aldermen, Assistants.

**Assistants.** From these, all Causes of Blood must be transmitted to the respective National Courts where they are determined, without farther Appeal. All these Courts sit continually, or at most have but short Vacations; and not being pestered with too much Formality, give Causes a speedy Dispatch, unless they be retarded by some under-hand Engagement.

The ordinary Charges of Law-Suits, are no where more moderate than in *Sweden*; the greatest Burden arising from a late Constitution, that all Declarations, Acts, and Sentences, must be written on sealed Paper, from Two Pence to Seven Shillings a Sheet, according to the Quality of the Cause. Other Charges are very few; every Man being permitted, and in Criminal Actions compelled, to plead his own Cause. Accordingly the Practice of the Law is below a Gentleman, and rather the Refuge than the Choice of meaner Persons. The Custom of a Jury of Twelve Men is so ancient in *Sweden*, that their Writers

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pretend it had its Original amongst them, and was thence derived to other Nations ; but at present it is disused every where, except in the Lower Courts in the Country, and there the Jury-Men are for Life, and have Salaries. In Criminal Matters, where the Fact is not very evident, or where the Judges are very favourable, the Defendant is admitted to purge himself by Oath ; to which is often added the Oath of Twelve Men, who are Vouchers of his Integrity.

Treason, Murder, double Adultery, Burning of Houses, Witchcraft, and the like heinous Crimes, are punished with Death, which is executed by Hanging of Men, and Beheading of Women ; to which, Burning alive or dead, Quartering or Hanging in Chains, is sometimes added, according to the Crime. Duels between Gentlemen, if the one Party be kill'd, are punished with the Survivor's Death, and a Note of Ignominy on the Memory of both. If neither be killed, they are both condemned to Prison, with



with Bread and Water for two Years; to which is added a Fine of a thousand Crowns, or one Year's Imprisonment and two thousand Crowns. Reparation of Honour, in case of Affront, is referred to the respective National Courts, where Recantation and begging of Pardon is usually inflicted.

*An Extract of several English Laws relating to Murder, Manslaughter, and Acts of Violence and Cruel Revenge, from the late Ingenious and Learned Dr. Wood's Institute of the Laws of England.*

Murder, (*Murdrum*, Sax. *Mordrue*) may be committed upon one's self, or upon another.

Murder upon one's self may be committed when one kills himself by Hanging, Poysoning, Drowning, Stabbing, &c. with Deliberation and direct Purpose. In this Case, one is termed *Felo de se*; but the Person that committs this Felony, must be of the Age of Discretion, and *Compos Mentis*.

Therefore, if an Infant of the Age of fourteen Years, or a Lunatick, or Idiot, or one distracted by Force of a Disease, kills himself, it is not Felony. In some Cases, he who maliciously attempts to kill another, and in pursuance of such Attempt, unwillingly kills himself, is *Felo de se*; as when one hastning to kill another, falleth upon his Weapon which he held in his own Defence: But as in other Felonies, Death must ensue within a Year and a Day after the Stroke. [See of the Coroner, Book I. Chap. VII. Of the Court of the Coroner, Book IV. Chap. I. And of Forfeiture, Book IV. Chap. V.]

Murder committed upon another, is when a Man of sound Mind and Memory, and of the Age of Discretion, unlawfully killeth any reasonable Creature in being, under the King's Peace, within any County, with Malice, Fore-Thought, either expressed or imply'd, so as the Party hurt or wounded dies of the Hurt or Wound within a Year and a Day. The Killing may be by a Weapon, Poyson, Crushing, Bruising

ing, Strangling, Drowning, Burning, Famishing, inciting a Dog, Bear, &c. to bite or hurt, whereby Death ensueth; and by laying a sick Man in the cold Air against his Will, by reason whereof he dieth.

It must be a killing of some reasonable Creature, Man or Woman, Subject or Alien, Christian or Heathen. See *Exodus* xxi. It must be within some County; for if it be done out of the Realm, it cannot be determin'd by the Common Law, but must be heard and determin'd before the Lord High Constable, &c. [See of the Court of the Constable, and Marshal of Admiralty Court, and the Court by Commission, according to 28 Henry VIII. Chap. XV. Book IV. Chap. I.] It must be with Malice. Fore-Thought. Malice is a form'd Design of doing Mischief to another. He that doth a cruel and voluntary Act, whereby Death ensueth, doth it of Malice Prepense and Fore-Thought in the Eye of the Law, tho' he doth it of a sudden; therefore Malice is expressed by



by the Party, or imply'd by the Law. I. Express Malice is, when the killing is with a sedate Mind, and form'd Design to Wound, Poison, or do some Injury to him that is kill'd : This Malice may be in the Principal that doth the Act, or in the Principal aiding and abetting, and in the Accessary before the Fact. When a Person in cold Blood maliciously and deliberately beats another, or doth other Corporal Damage in such a manner that he dieth thereof, he is guilty of Murder by express Malice, tho' he did not design to kill him ; but if he beats him in such a manner, that it appears he only meant to chastise him, it is Manslaughter only. If one executes his Revenge upon a sudden Provocation, in such a cruel manner, with a dangerous Weapon, as shews a malicious and deliberate Intent to do Mischief, and Death ensues, it is express Malice from the Nature of the Fact, and Murder. If two or more come to do an unlawful Act, as to beat a Man, to committ a Riot, to rob

rob a Park, &c. and one of them kills a Man ; this is Murder in all of that Party that are present, aiding or assisting, or that were ready to aid and assist, tho' but Lookers on. It is certain, that where the principal Intent was to committ another Felony, and a killing happens in pursuance of that unlawful Purpose, all are guilty of Murder ; for all will be said to intend the Murder ; and such Persons are said to be present that are in the same House, though in another Room, or in the same Park, though at half a Mile distance, or out of View ; and so it is when Death happens, where several Persons intend only a Breach of the Peace, and to resist all Opposition. If *A*, upon a Quarrel with *B*, tells him that he will not strike him, but that he will give him a Pot of Ale to strike him, and thereupon *B* strikes, and *A* kills him, he is guilty of Murder ; for this was only to cover his mischievous Intention. If, upon a sudden Quarrel, one being provoked by bare Words or Gestures, makes a  
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Push at another with a Sword, before the other Sword is drawn, and thereupon a Fight ensues, and he who made the Assault kills the other, he is guilty of Murder, because he shew'd at first that he design'd to kill him; but if he had made no Pass at him till his Sword was drawn, and till he was upon his Guard, and then fights with him, and kills him, he is guilty of Manlaughter only. If one resolves to kill the next Man he meets, and does kill him, it is Murder, tho' he knew him not, for it is Malice against all Mankind. In the Case of Duelling, it is agreed, that where two Persons meet, and fight in cold Blood, upon a precedent Quarrel, or at such a Day after the Quarrel, in which it may be presumed the Blood was cool'd, and one killeth the other, he is guilty of Murder, tho' he had often declined to meet him. In Duelling, not only the Principal, who actually kills the other, but also the Seconds are guilty of Murder, whether they fought or not, and the Seconds of the Per-



Person kill'd are equally guilty, by reason of the Encouragement which they gave their Principals, by joining with them, [See of Affrays *infra*, and the 9th Ann. Chap. XIV. where the Person assaults and challenges another to fight for Money won at Play, &c.] These are Instances of express Malice, because the Acts are cruel or unlawful, deliberate in pursuance of the unlawful Act, and immediate Hurt of another, or by necessary Consequence. II. But there is Malice also imply'd, where it is not express'd in the Nature of the Act. This may be in three Cases. 1. In respect of the manner of killing, as by Poisoning. [See 1 Ed. VI. Chap. XII.] Or when one killeth another without any Provocation, or upon slight Provocation: No Affront by bare Words or Gestures is sufficient Provocation. 2. In respect of the Person killed, as if a Constable or Watchman is killed doing his Duty, or any other that comes in Aid of the King's Officer, while he is executing the King's Office,

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though the Killer knew them not to be such Persons, yet it is Murder. Others contend that he ought to have Notice from 'em, that they come to keep the Peace, &c. If a Bailiff is executing a lawful Warrant, and is kill'd, here Malice will be imply'd, though the Bailiff arrests one on a Sunday. [See 29 Car. II. Chap. VII.] Or though he shews not his Process, where it may be demanded, and though the Process is erroneous: But if the Bailiff do that which is unwarrantable, (as if he breaks open a House to arrest in Civil Cases, either by Night or by Day) and is slain, Malice shall not be imply'd to make it Murder. So it is where the Bailiff hath no Authority at all, [See Of Bailiffs, Book I. Chap. VII.] 3. In respect of the Person killing, as if one assaults another to rob him, and in Resistance kills him; if a Prisoner, by Duress of the Jaylor, comes to an untimely End; if one is executed by Command of a Judge, who hath no Jurisdiction in the Cause; if

Execution is not by a lawful Officer; or if the Sheriff, when he ought to hang the Party attainted, does burn or behead him; or if an Officer authorized to whip, does it with such Rigour, that by Means thereof the Offender dieth, &c. In all these Cases the Law doth imply Malice. [See the Statute of Stabbing, 1 Jacob. I. Chap. VIII. post Manslaughter.]

*Of Manslaughter.*

Manslaughter is the killing of another without Malice, in a present Heat, on a sudden Quarrel, upon a just Provocation, or in the Commission of a voluntary and unlawful Act, without any deliberate Intention of doing Mischief. There is no Difference betwixt Murder and Manslaughter, but that Murder is upon Malice Fore-Thought, express'd or imply'd; and Manslaughter upon a sudden Occasion, or without an ill Intent: Therefore in Manslaughter, there can be no Accessaries before the Fact. It must be upon a sudden Quarrel, where



the Party guilty did not appear to be Master of the Temper, by talking calmly upon his Quarrel, or afterwards upon other Discourse, whereby the Heat of the Blood might be presum'd to be cool'd. Therefore where two meet together, and striving for the Wall, one kills the other, this is Manslaughter ; and so it is if they had upon a sudden Occasion gone into the Field and fought, and the one had kill'd the other ; for all is one continu'd Act of Passion upon the first sudden Occasion. If two fall out on a sudden and fight, and one breaks his Sword, and a Stranger standing by lends him another, and he kills therewith, it is Manslaughter in both, or it must be upon a just Provocation. But when it appears that one hath kill'd another, it shall be intended at first that he did it maliciously, unless he can prove that he did it upon a just Provocation. No Breach of a Man's Word, or Trespass either on Lands or Goods, no Affront by Words or Gestures, will excuse the killing another

ther from the Guilt of Murder, or be thought a just Provocation; but if upon ill Words, (as giving the Lye, or calling one another Son of a Whore) both the Parties suddenly fight, and one kills the other, this is but Man-slaughter. Just Provocations may be in the following manner;

As if one upon angry Words assault another, either by pulling him by the Nose, or by filipping his Forehead, &c. and he that is so assaulted shall draw his Sword, and immediately kill the other, this is only Man-slaughter: For the Peace was broke by the Person kill'd, and an Indignity was offer'd to the Slayer, so that he might reasonably apprehend that there might be some farther Design upon him. If a Man's Friend is assaulted by another, or engag'd in a Quarrel that comes to Blows, and one in the Vindication of his Friend shall on a sudden take up a mischievous Instrument, and kill the Enemy of his Friend, that is but Man-slaughter. So it is if a Man sees another

ther injuriously restrain'd of his Liberty by pretended Press-Masters, &c. and out of Compassion comes to his Rescue, and kills any of those that so injuriously restrain'd him, that is Manslaughter. Again, when a Man is taken in Adultery with another Man's Wife, and the Husband presently kills the Adulterer, this is a just Provocation, and makes it Manslaughter; for here was the highest Invasion of Property. (See *Levit. xx. ver. 10.*) The unlawful Act must be without Deliberation, and without Intention of doing a Personal Hurt, to make it Manslaughter; for if the unlawful Act is deliberate, and tends to the Personal Hurt of any immediately, or by way of necessary Consequence, and Death ensues, it is Murder, as before observ'd. So that any unlawful Act, without an ill Intent, is Manslaughter; with an ill Intent, Murder. As when two play at Foils, and one kills the other, it is Manslaughter only; for tho' the Act was unlawful, yet there was no deliberate



liberate Intention of doing a Personal Hurt. If two Masters of Defence, without the King's Command, play at Hand-Sword, &c. and one hurts the other, so that he dies within a Year and a Day, it is only Manslaughter : It is not Felony, if it be by the King's Command ; for in that friendly manner they play by Consent, and for Sport, to try their Manhood, or that they may be able to do the King a Service in that Kind, as Occasion shall offer : So if Death happens by playing at Foot-Ball, by Wrestling, and such like Sports, which are attended with no apparent Danger of Life, and are used only for Sports or Exercise. If one killeth another by throwing a Stone over the Wall, in a Place where Men often resort, or by throwing a Stone at another wantonly in Play, and by doing such idle Actions as cannot but endanger the Bodily Hurt of some one or other, it is Murder, if done with an evil Intention to hurt ; if without such Intention, it is Man-

**Manſlaughter.** The Intention of Evil, tho' not againſt a particular Perſon, makes Malice imply'd. Certainly, if a Man knows that there are People paſſing by in the Street, (as in London there is a continual Concourſe of People paſſing up and down) and throws Rubbiſh, a Piece of Timber, or great Stones, from a Houſe, and killeth another, it is Murder; tho' he calls out to the People to ſtand aſide; becauſe in common Preſumption, his Intention was to do Miſchief, when he caſts a thing down amongſt a Multitude of People; otherwiſe, if he had call'd out in a Country Town, where there is no Frequency of Paſſengers. If one by ſhooting at a wild Fowl, Hare, &c. kills a Man by Accident; if he is not qualify'd to keep a Gun, it is Manſlaughter; but if he was qualify'd to keep a Gun, and the Act was lawful, it is Chance-Medly only; but though qualify'd, if he ſhoots any tame Fowl of another, and he kills a Stander-by, it is Murder, for the Act is unlawful. So  
if

if one meaning to steal a Deer in the Park of another, accidentally killeth a Boy that lies hid, this is Murder; but *quare*, because the unlawful Act doth not tend immediately, or by necessary Consequence to the Hurt. If a Physician gives one such Physick, that the Patient dies of it in the Operation, it is not Homicide, if there was no felonious Intent; but if one that is not of the Faculty of Physicians takes upon him the Cure of a Man, and he dies of the Potion, &c. it is said to be Homicide and Felony. But there is a Manslaughter, which is punishable as Murder; for by 1 Jac. I. Chap. VIII. when one thrusts or stabs another, not having then a Weapon drawn, or striking first, so that he dies thereof within six Months after; although it were not of Malice Fore-Thought, he shall not enjoy the Benefit of his Clergy.

This Act shall not extend to charge any with thrusting or stabbing, when it is done only *se defendendo*, by Misfortune,



tune, or keeping Peace, or in chastising a Child or Servant with no Intent or purpose to committ Man-slaughter.

The Statute extends to him only that first actually gave the Stroke, or stabb'd the other, and not to those that were aiding or abetting in the Fact; for they shall be allowed Clergy. So that if it cannot be proved by whom the Stroke was given, it shall be out of the Statute.

III. Chance-Medly is where a Man is doing a lawful Act, without Intent of Hurt to another, and the Death of some Person doth by Chance ensue. Man-slaughter is call'd Chance-Medly; but then it signifies the killing a Man upon a sudden Brawl or Contention, or by Chance. But Chance-Medly in common Speech, is where Death happens when one is doing a lawful Act, and without an ill Intent. So that while one is using a lawful Diversion, as by shooting at Rovers or at wild Fowl, &c. or when one is hewing a Tree, &c. and the

the Head of the Hatchet flies off, and a Stander-by is killed, this is Chance-Medly. Also if one is doing a lawful thing that may breed Danger, and gives Warning; as where a Workman flings down Rubbish or Timber from a House, and gives Warning to all Persons to take Care and stand aside, and yet kills one that happens to be underneath, this is Chance-Medly: Otherwise in populous Cities, where People are continually passing up and down. If a Man whips his Horse in the Street, and makes him to gallop, and runs over a Child and kills it, it is Manlaughter; but if another had whipt the Horse, it would be Manlaughter in him, and Chance-Medly in the Rider. If a Schoolmaster in correcting his Scholar, or a Father his Son, or Master his Servant, or an Officer in whipping a Criminal in a reasonable manner, happens to occasion his Death, it is Chance-Medly; but if they exceed the Bounds of Moderation, they are guilty of Manlaughter; and if they

correct with an improper Instrument for Correction, as with a Sword or an Iron-Bar, or kick the Scholar to the Ground, and then stamp on him and kill, it is Murder, because of the Barbarity of the Action, *Exodus* xx. ver. 20, 21. *Numb.* xxxv. ver. 15. In Chance-Medly, the Offender forfeits his Goods, but hath a Pardon of course. 4. The Life of a Man may be taken upon a Necessity.

This Necessity makes it excusable or justifiable Homicide. Excusable Homicide is *se defendendo*, or when one has no other possible Means of preserving his own Life, than by killing the Person who reduced him to such a Necessity : It is said that it must be a killing upon an inevitable Necessity. The Party assaulted is not to be excus'd, unless he gives back to the Wall, Hedge, River, &c. beyond which he cannot go before he kills the other ; but if the Assault is so fierce, and in such a Place, that giving back would endanger his Life, he need not go back ; certainly this must be



be a killing, *se defendendo*, or in his own Defence. And although one retreats from an Assault to the Wall, &c. and gives the other divers Wounds in his Retreat, yet if he gives him no mortal Wound till he gets thither, he is guilty of excusable Homicide, and *se defendendo* only; but if the mortal Wound was first only given, then Man-slaughter. If one assaults another upon Malice prepense to kill him, and then flies to the Wall, &c. and there in his own Defence kills him, it is Murder, for he is the original Cause of killing. If a Prisoner assaults a Jailor, or one assaults an Officer of Justice that hath a lawful Warrant, they are not bound to give back before they kill in their own Defence. So it is where a Thief offers to rob and Murder another, either Abroad or at his own House; and so it is declared by the 24 *Henry VIII.* A Man cannot draw a Weapon in his own Defence in a Church, or Church-yard. [See the 5th and 6th of *Edward VI.* Chap. IV.] or in View of the King's Courts

Courts of Justice, or in any of the King's Palaces.

Upon an Indictment of Murder, one cannot set forth his Case in a Special Plea, but must plead Not Guilty, and give the Special Matter in Evidence; and tho' the Verdict is Chance-Medly, or *se defendendo*, he shall forfeit all his Goods and Chattels, but he shall have a Writ of Restitution, and Pardon of Course. This Forfeiture is made that Men may be wary and careful how they take away the Life of any Man.

By the 24th of *Hen. VIII.* Chap. V. if one is indicted or appealed for the Death of another, attempting to murder him, or rob him on the Highway, or in his House, (and so found by Verdict) he shall forfeit no Lands or Goods for the same, but shall be acquitted and discharged thereof. [See of Forfeiture, Book IV. Chap. V. See 6 *Edw. I.* Chap. IX.]

II. Justifiable Homicide must be also a Necessity: This is either of a publick or private Nature. I. Publick,

lick, either occasion'd by a due Exercise of publick Justice, or the Advancement of it by the due Execution of Justice, when Judgment of Death is given by one that hath Jurisdiction in the Cause, and when Judgment is executed by a lawful Officer, and the Execution is pursuant to the Judgment; but if the Judgment is only erroneous (as Death in Trespas by Justices of the Peace, &c.) the Officer is not guilty of Felony, tho' the Judge is guilty. In Advancement of Justice, either in relation to Criminal or Civil Causes: Criminal, as when a Bailiff or Sheriff having a lawful Warrant, arrests a Person that hath actually committed Felony, or that is indicted of Felony, tho' no Felony done, or the Party is innocent, and he will not obey; or when he will not suffer himself to be arrested, but defends himself; or when one either with or without a Warrant pursues a Felon upon an Hue and Cry, that flies for it, or one that is indicted of Felony: [See of a Warrant in Law, &c.



&c. Book IV. Chap. V.] Or if a Prisoner assaults those who conduct him to Jail, or his Jailor, while he is endeavouring to escape; if those who are engaged in Riot, See i Georg. Chap. V.] or forcible Entry or Detainer, stand in Opposition to a Justice's Command or lawful Warrant: If any are doing a Trespass in a Forest, Chace, or Park, or in any enclosed Ground where Deer are kept, and will not render themselves to the Keepers, but fly or defend themselves. [See 3d and 4th W. and M. Chap. X. for Preservation of the Game.] In all these Cases; a killing may be justify'd, [See of Murder ante,] as a Sheriff, &c. may kill a Man that resists an Arrest. (*Qu*) But he cannot kill one that flies from the Execution of a Civil Process. So it is, if the Sheriff endeavour to take one that hath been arrested, and hath made his Escape, and doth resist him; but no private Person hath this Authority upon an Arrest in a Civil Matter, as he hath upon an Arrest  
for

for Felony : Neither hath the Sheriff,  
*&c.* this Authority either in Ci-  
 vil or Criminal Cases, but upon a  
 Necessity, as aforesaid ; as when an  
 Offender cannot be taken without kil-  
 ling him, *&c.* If he might be taken  
 without killing him, it will be esteem'd  
 Murder. 2. Private, occasion'd in De-  
 fence of one's Person, House, or Goods ;  
 as when a Woman kills one that at-  
 tempts to ravish her, or when one  
 kills another that attempts to mur-  
 der him, rob him, abroad or in his  
 House ; [See 24 Hen. VIII. Chap. V.  
*ante.*] When one in drowning thrusts  
 another from a Plank, *&c.* whereby  
 he is drown'd ; when the Owner of a  
 House, his Servant or Lodgers, kill  
 one that endeavours to rob or burn the  
 House, or to committ any other Fe-  
 lony : But if the Assault in the House  
 were in the Day-time, not to rob  
 one, but to beat me, *&c.* it would  
 be a killing *se defendendo*. If one comes  
 into a House claiming a Tilte, or  
 breaks open my Windows to arrest  
 me, or doth any private Trespass to  
 K my

my Goods, and I kill him, it is Manslaughter at least. In Defence of the Possession of my Goods, I may justify to beat him that will wrongfully take them from me; but I cannot justify the killing, unless he be a Thief. If one enters wrongfully and forcibly into the House of another, and the Owner endeavours to fire the House, and the Wrong-doer kills him, it is also Manslaughter. See 1 Jacob. I. Chap. VIII. Upon the Special Matter found, the Person is to be dismiss'd without any Forfeiture or Pardon purchased.

These are the Felonies (or at least supposed Felonies at first) committed against the Life of the Subject.

1. An Assault (*Affultus* or *Insultus*) is an Attempt or Offer to do Hurt to one's Person, as by an Offer to strike one, holding up his Fist in a threatening manner, or by presenting a Pistol towards or near one, tho' no actual Hurt done. Words cannot amount to an Assault, tho' there are some Opinions to the contrary; the Offender is liable to an Action at the Suit



Suit of the Person assaulted for Damages, &c. and to an Indictment, for which he shall be fined and imprisoned till paid, [See 5th and 6th Edw. VI. Chap. IV. *infra*]

2. Battery, (from *Battre* to strike) is an Injury done the Person of another in a rude and angry manner, as by striking, pushing, jostling, catching by the Arm, flipping upon the Nose, spitting in the Face, pulling off a Button in a rude and insolent manner, &c. But it is no Battery to lay one's Hands gently on another that is going to strike one.

This Offence is punishable by Action and Indictment in the same manner as an Assault. If the Husband and Wife bring an Action of Battery for beating himself and his Wife, the Writ shall abate, because the Wife cannot join for the Battery of the Husband; and the Husband cannot have Judgment alone, because his Wife is joined with him in the Original; and so it is in like Cases. A Man may justify the beating of an-

other who first assaults him in his own Defence, by a Special Pleading in an Action *De son Assault Demefne*, or that the Battery was occasion'd by his own Assault; or that he may give that in Evidence upon Not Guilty to an Indictment, and the Record of the Conviction of the Party by Indictment, may serve afterwards for Evidence in the Action of Trespass for the same Assault and Battery. [*See of a Confession, under Tit. Of the Behaviour of a Criminal under Arraignment, Book IV. Chap. V.*] One may also justify the beating another who assaults his Wife, Father or Mother, or his Child, or his Servant; and so on the contrary, the Wife, Father or Mother, Child, or Servant, may justify a Beating, where those that are so nearly related to them are assaulted. Also the Law doth allow to beat another in the necessary Defence of his Goods; but if he kills him, it is Felony. That one may beat another in Defence of his Possession of his Estate, if upon a Disturbance one pretends to assault,

or

or beat him. Those that have a Natural or Civil Authority over others, may chastise them for their Offence: And therefore a Husband may correct his Wife; a Parent may justify the chastising of his Child within Age with Moderation; a Master his Servant or Apprentice; [See 32d of *Hen. VIII. Chap. XII.*] a Schoolmaster his Scholars, a Jailor or his Servant his unruly Prisoners; an Officer those that resist his Arrest. So one may chastise his Kinsman that is mad, chain him up and beat him with Rods, to keep him from doing Hurt. If the Life of any one is in Danger by beating or otherwise, any Person may beat him that offereth that Violence, to make him quiet.

[See 5 *Hen. IV. Chap. VI.*] For the Penalty for assaulting of a Servant of a Knight or Burgeſs in Parliament, 11 *Hen. VI. Chap. XI.* For the Punishment of those that do make an Assault on any that come to Parliament, or to the King's Council, the 9 of *Anne, Chap. XVI.* Concerning an Assault  
on



on a Privy Counsellor in the Execution of his Office, 9 *Anne*, Chap. XIV. Concerning an Assault for Beating or Challenging to fight upon an Account of Money won by Gaming. 6 *Georg.* Chap. XXI. For an Assault, beating or wounding an Officer of the Customs in the Execution of his Office, &c. 6 *Georg.* Chap. XXIII. For assaulting any Person in the Streets or Highways, with Intent to tear his Cloaths, &c.

By the 5th and 6th of *Ed.* VI. Chap. IV. None shall use any chiding Words in a Church or Church-yard, on pain of Suspension of a Layman, *ab ingressu Ecclesiæ*, and of a Clerk from the Admission of his Office. He that shall smite or lay violent Hands upon any other, is thereby excommunicated *ipso facto*. He that is convicted of striking with a Weapon in any Church or Church-yard, or shall draw any Weapon there with Intent to strike another with the same Weapon, by Verdict or Confession, on two lawful Witnesses, shall, by Judgment of the Justice,

Justice, &c. have one of his Ears cut off, and shall stand excommunicate *ipso facto*.

I. Church-Wardens, &c. who strike Boys for playing in the Church, or pull off the Hats of those that sit there with their Hats on, or gently lay their Hands on one that is excommunicated to turn him out of the Church, are not within the Statute.

By the 33d of *Hen. VIII.* Chap. XII. Malicious striking in the King's Palace to Bloodshed, (where the King's Royal Person resideth) is punishable with the Loss of the Offender's Right Hand, perpetual Punishment, and Fine at the King's Pleasure. A striking in the Palace where the King is not present, is not within Act, as may be gather'd from the Preamble. Blood must be drawn, for striking without Bloodshed is not to be punish'd in this manner: But drawing a Weapon only, without striking, in *Westminster-Hall*, or any other Place, sitting, the Courts of Justice, or before Justices of Assize, Justices of Oyer and Terminer,

ner, [See 25 Edw. III. Chap. II.] upon any Judge or Justice, the Offender shall lose his Right Hand, and forfeit his Lands or Goods during Life, and be perpetually imprison'd. So if one doth strike a Juror, or any other Person within the View of the said Courts, with a Weapon or without, he shall have the same Punishment ; but not if he only maketh an Assault. If any do rescue a Prisoner in or before any of the said Courts, who was committed by the said Justices, he and the said Prisoner assenting thereto, shall forfeit Lands and Goods, and be perpetually imprison'd ; but the Rescuer shall lose no Hand, because the Stroke was not given.

An Affray (from *Affrayer* to terrify) is a fighting of two or more, to the Terror of the King's Subjects : There must be a Stroke, given or offer'd, or a Weapon drawn. If the Stroke is offer'd on one side only, or in a private Place out of the hearing of any, it is an Assault ; though an Assault and Affray are sometimes confounded



founded. A Menace to beat or kill is no Affray. To challenge another either by Word or Letter, to fight a Duel, or to be a Messenger of such a Challenge, is a high Offence; and the Combat, though no Blood is drawn, is an Affray. Any private Person who sees others fighting, may lawfully part them till the Heat is over, and deliver them to the Constable; and the Law doth encourage him to it; for if he receives any Harm by the Affrayers, he is allow'd his Remedy by Action against them. And if any private Person is commanded by the Sheriff, Justice of the Peace, Constable, &c. to assist in parting the Affrayers, and he refuses or neglects to do it, he is punishable by Fine or Imprisonment; and so is the Constable, or other Conservator of the Peace, if they neglect their Duty. [See of Constables, Book I. Chap. VII.] All Affrays are punishable by Fine or Imprisonment.

*An APPENDIX, con-  
cerning Appeals of Death,  
from the aforesaid Author.*

**A**N Appeal of Death is of two Sorts, viz. of Murder, and of Manslaughter; and these must be brought by the Wife for the Death of her Husband, or by the Heir Male for the Death of his Ancestor. An Appeal lieth not for killing *se defen-  
dendo*, or by Misadventure. The Wife ought to be a Wife *de Jure*; and therefore one may plead she was never lawfully married to the Party slain: She must also be a Wife *de Facto*, (*i. e.*) in Possession, as well as in Right, without Elopement. (*Qu.*) Divorce, &c. If she does not continue a Widow, but marries before or depending the Appeal, the Appeal is lost. If she marries after Judgment, she cannot have Execution; for the Loss of the Husband is the Cause of the Appeal. A Husband cannot have

an Appeal of Death of his Wife, but the Heir only. The Heir must be the Male Heir, tho' he derives by a Female; for no Female, except a Wife, can maintain an Appeal; and he must be Heir according to the Course of Common Law, and Heir at the time of killing his Ancestor. If the Appeal is against the Heir as guilty of killing, the next Male Heir shall have the Appeal. If the Wife kills the Husband, the Heir shall have the Appeal; but if the Person kill'd by a Stranger hath a Wife surviving, the Heir shall not have it, though she dies within the Year; and if the Heir dies after the Death of the Ancestor, another Heir shall not have the Appeal. No one can bring an Appeal of Death of a Person attainted of Treason or Felony except the Wife, because such an one has no Heir: Therefore if the Person kill'd had two Sons at the time of his Death, and the Elder is attainted of Treason or Felony, neither of the Sons can have an Appeal.



An Appeal may be brought by Original Writ out of the Chancery, or by Bill; by Bill out of the *King's Bench*, before Justices of Jail-Delivery; if the Appellee is in Prison, before them; before Commissioners of Oyer and *Terminer*, before Justices of *Nisi Prius*, before Justices of the *King's Bench*, or before the Sheriff and Coroner in the County Court; but the Sheriff and Coroner can only take and enter the Appeal and Court, and proceed no farther; it must be remov'd by a *Certiorari* into the *King's Bench*. [See 3 *Hen. VII. Chap. I.*] An Appeal may also be brought before the Constable and Marshal, of a Felony done out of the Realm. There can be no Appeal of Treason in Parliament, for it is ousted by 1 *Hen. IV. Chap. XIV.*

By *Magna Charta*, or 9th of *Hen. III. Chap. XXXIV.* No Man shall be taken or imprison'd upon the Appeal of a Woman for the Death of any other but her Husband.

By *West. 1.* or the 3<sup>d</sup> of *Edw. I.* Chap. IV. The Accessary in an Appeal shall not be Out-lawed before the Principal is attainted. [See 2<sup>d</sup> *Inst.* 182.]

By the Statute of *Gloucester*, or the 6<sup>th</sup> of *Edw. I.* Chap IX. If the Appellor declares the Deed, or the Year, the Day, the Hour, the Time of the King, and the Town where the Fact was done, and with what Weapon, the Appeal shall stand ; so that he sue within a Year and a Day after the Fact. [See 1 *Hen. V.* Chap. V. and 2 *Inst.* 665, &c.]

Let us explain the Statute. The Deed, whether it was by Wound, or without Wound ; if by Wound, four Things are necessary to set forth in the Appeal.

1. In what Part of the Body the Wound was given. 2. Of what Length and Depth ; so that it may appear to the Court, that the Wound was mortal ; but if an Arm or Leg is cut off, the Length or Depth cannot be shewed. 3. That the Party died of the Wound. 4. It must appear that he died of that Wound within a Year and a Day after the giving the Wound. If

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without a Wound, it is either by a Weapon, or without. By Weapon, as by Blow, Bruising, &c. Without Weapon, as by Drowning, Poisoning, Strangling, &c.

In both these Cases the Circumstances must be set forth :

The Year, *i. e.* the Year of the Reign of the King, the Day, the Natural Day, containing Twenty four Hours. And therefore if the Fact was done in the Night, you must *in Nocte*, say, *ejusdem Diei*. The Killing must be not alledged, the Day that one died, the Day of the Wound or Blow.

The Hour. In the Count of the Appeal, one may say about Ten of the Clock, &c. but you must not say about the Day, Year, or that the Wound or Blow was about any Part of the Body : It is difficult to alledge the true Hour, and not so of the Year, Day, or Part of the Body ; and yet the Plaintiff in the Appeal is not bound to prove the precise Hour, or the Day alledged. In Indictments, the Hour needs not be alledged.

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**The Time of the King.** This is added, notwithstanding Mention was made of the Year before, wherein the Blow, &c. was given ; for here the Year when Death ensued is to be shewn, that it may appear that he died of the Blow, &c. within the Year and a Day.

**The Town.** If the Murder or Homicide was in a Town ; otherwise, if out of the Town, the Place, if known, out of any Town must be alledged, as known in such a County. If the Fact was done in a City, the Parish must be alledged ; but in the County, as known in such a County, if the Parish contains several Towns, alledge it in a Town. [See 2d and 3d Edw. VI. Chap. XXIV. Of Tryal by the Country post.]

**With what Weapons.** One certain Weapon must be alledged in the Count ; yet if it be proved in Evidence that the Wound was given with any other Weapon, the Offender shall be found guilty : But upon such a Count, or in an Indictment, it cannot be given in Evidence that  
the

the Party was poisoned or drowned, &c. where no Weapon at all was us'd; it being Murder or Homicide in another kind. [*See of Evidence to the Petty Jury infra.*] Though this Statute requireth that the Weapon be mention'd, it must be understood where one is killed with a Weapon.

So that he sues within a Year and a Day. The Year must be computed according to the Kalendar, and not according to Twenty eight Days to the Month. By Common Law, the Appeal was brought within a Year and a Day. If the next Heir of the Dead is within Age, he must bring his Appeal within a Year and a Day, according to this Act, after the Fact; i. e. after the Felony committed by Homicide, or by the Death, not after the Stroke or Wound.

By 3 Hen. VII. Chap. I. An Indictment may be try'd without staying for an Appeal: Altho' the Principal or Accessary is acquitted within a Year and a Day, they shall be remanded to Prison, or let to Bail, until the

the Year and Day is out ; and whether they be attainted or acquitted, yet the Wife, or next Heir of the Slain, may, within a Year and a Day, (the Benefit of the Clergy not being before had) prosecute their Appeal against them, any such Attainder or Acquittal notwithstanding. If there is an Indictment and Appeal depending together, the Judges ought to proceed first upon the Appeal, if the Prosecutor desires it, and prosecutes without Fraud. The Indictment may be preferr'd to the Appeal, if the Court shall find there is like to be a feint Prosecution of the Appeal, in order to acquit the Person ; for the Acquittal upon a feint Prosecution will conclude the King.

If the Murderer is acquitted upon the Indictment, or found guilty, and pardon'd by the King, yet the Wife or Heir may have an Appeal ; but if the Party is found guilty of Manslaughter, and hath Benefit of Clergy, no Appeal lieth. It is said to be unreasonable that the Appeal should in-

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terpose presently after the Conviction, to prevent Judgment and Execution in Manslaughter; for if that should be admitted, then an Appeal might prevent Judgment and Execution upon a Conviction of Murder, as well as Manslaughter. It is said that a Verdict finding one guilty of Homicide *se defendendo*, or an Indictment of Murder, may be pleaded to an Appeal of the same Death, as it was in Common Law; for that the 3d of *Hen. VII.* Chap. I. mentions only Persons acquitted or attainted as subject to Prosecution upon an Appeal, [See of Pleas in Bar *infra.*] An Appeal is to be arraigned by the Council in French, but enter'd in Latin. The Count must be, that the Appellant appears in *propria Personâ*; but the Appeal may be prosecuted by Attorney and Council, [See the 3d of *Hen. VII.* Chap. I.]

One standing mute in an Appeal of Murder hath the same Judgment as on an Indictment.

Evidence given for or against the De-

Defendant in an Indictment, is no Evidence in an Appeal. If one is acquitted, he shall have his Damages against the Appellant. [See *West. II.* or *12th of Edw. I.* Chap. XII. and the Exposition thereof, 2. *Inst.* 383, &c.] The Jury may find the Defendant guilty of Manslaughter, or not guilty generally. If in an Appeal of Murder the Defendant is found guilty of Murder, Judgment is, that he shall be hanged, and that the King cannot pardon it; and if he is acquitted upon the Appeal, he may be arraigned upon an Indictment at the King's Suit.

Having finished this short Collection of Divine and Human Laws, and having omitted nothing that is Material or Necessary to be transcribed from such select Laws of this Nation, as particularly appertain to the Subject of Revenge; I design to conclude the present Treatise by making some proper Remarks, and drawing some natural and reasonable Infe-

fences from them, chiefly regarding the latter.

And *First*, it must be acknowledged as manifest and confessedly true, that whosoever duly considers the excellent Nature, the great Sagacity, and impartial Equity of the Divine Laws, must necessarily descry their just Pre-eminence, and perceive a singular Difference between them and all those of human Composure.

*Secondly*, I shall take Notice and observe, that what Person soever had incurr'd the Penalty of this sacred and indispensable Law by killing another, (I mean the Moral Law, as contain'd in the Books of *Moses*) was never exempted from suffering Death, unless he had actually done it at Unawares, as being occasion'd by some unavoidable Accident, or *se defendendo*; which, though it is not expressly there mentioned, is certainly imply'd, since it was in Fact permitted; and even in such an extraordinary and excepted Case, that Person that was so Unfortunate as to kill his Neighbour un-  
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awares, and without any wilful Fault;  
 was oblig'd to undergo a lesser Punish-  
 ment, by being confin'd within the \* *Numb.*  
 City of Refuge, till the Death of the *xxiv. 19.*  
 High Priest, in order to shew how  
 extreme cautious and very careful all  
 Persons should be to avoid the shed-  
 ding the Blood of their Fellow-Crea-  
 tures. But if we may allow'd truly  
 and impartially to compare our afore-  
 said Laws with the strictly righteous,  
 and immutable Law of God, we  
 shall find several nice Distinctions,  
 and particular Exceptions, contained  
 in the former, and relating to the  
 Subject of Murder and Manlaughter,  
 which are not altogether consistent  
 with this short and positive Precept.  
 \* *Whosoever killeth a Man, shall surely be* \* *Exod.*  
*put to Death.* And herein consists the *xxi. 12.*  
 main Difference between the one and  
 the other, that the Divine Law punish-  
 eth all wilful Acts of Manlaughter,  
 as well as those of deliberate Murder,  
 equally with Death; whereas, accord-  
 ing to the Tenor of our Laws, the a-  
 bove-mention'd Facts are not account-  
 ed

ed Capital Crimes, nor punished as such, unless committed with Malice Fore-Thought, and deliberate Intent; and this Malice is described to be a form'd Design of doing Mischief with a sedate Mind, and in cold Blood; but if the same Fact is committed in a great Heat, and Hurry of Passion; as when a Person being provok'd by affrontive Words, or scornful Gestures, draws his Sword, and stays till his Adversary's Sword is drawn before he makes a Pass at him, and presently kills him; this is call'd Manslaughter, and is not punishable with Death: And thus in case of Duelling, when two Persons challenge each other, and immediately fight upon a sudden Quarrel, he that gives the Mortal Wound, and kills the other, is usually found guilty of Manslaughter; whereas, if they had delay'd fighting till such time as it may reasonably be suppos'd the Heat of their Passion was abated, the Jury must have found him guilty of wilful Murder. But as the sacred and unerring Law of God  
does

does not contain any such peculiar Distinctions, and is subject to no Alterations in so important an Affair, as that of preserving and securing the precious Lives of Mankind ; so likewise, if we consider the Matter according to the Dictates of human Reason, neither is there any such considerable or real Difference as to the true Nature and Circumstances of the two foremention'd Crimes, as to render the one worthy of Death, and inflict no greater a Punishment than that of burning the Hand of him that is guilty of the other. For since the cruel Attempt and wilful Act of Manlaughter, as well as the Damages thereby sustained from the Loss of a Subject and a Relation, are the same as those of premeditated Murder ; it seems reasonable to punish the one equally with, though not in so severe and ignominious a Manner as the other. If it be objected that Malice prepenſe, and contriving Revenge, is an Aggravation of Guilt, this is allow'd to be true ; and at the same time



time it must acknowledg'd, that whoever draws his Sword upon any slight Provocation, and kills a Man in a sudden Quarrel, or Duel, should be accounted an implacable and common Adversary of Mankind, and deserves no less than Death, although it should be allow'd he is not guilty in so great a Degree as he that committs deliberate Murder.

Wherefore, as it is the earnest Wish, and reasonable Desire, of all such as have a tender Regard to preserve the important Lives of their best Friends and dearest Relations in particular, as well as to maintain and advance the good Order, complete Welfare, and Happiness of Society in general, that our excellent Legislators, who have lately shewn the utmost Sagacity and greatest Wisdom in composing several new Laws, for preserving our Civil Rights and Properties, and securing our just Privileges, and sacred Religion, would farther extend their prudent Care and kind Endeavours of making more strict and severe Laws

Laws for punishing the most detestable and heinous Crime in the World ; I mean, that of wilfully slaying and unlawfully shedding the Blood of any Person whatsoever. And whereas many fatal Accidents and dismal Disasters, which often occur in several Parts of *Great Britain*, are many times occasion'd by the unjust and violent Acts of cruel and revengeful Men, who are not always sufficiently punished according to their Demerits, by reason of their taking Advantage of the great Mildness and Lenity of our Laws ; it seems very expedient and absolutely necessary, that the Consideration hereof should be humbly offered to the Parliament, and a Proposal made for introducing and enacting a particular Law to punish all Criminals duly convicted of wilful Manlaughter with Death.

And farthermore, in order to promote the general Safety and Welfare of Human Society, if it was ordered and appointed by the Legislative Authority,

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thority, that some extraordinary, just, and equitable Court should be invested with a special Prerogative, and full Power of hearing and determining all petty Causes relating to Acts of Violence, Oppression, and cruel Revenge, and for inflicting a moderate Punishment on all lesser Crimes of this malignant Nature and Quality, as the most effectual way to prevent greater, and without the tedious Delay and Expence, as is usual in the ordinary Course of Proceeding at Common Law ; and that some proper learned Advocates and experienced Counsellors were employ'd by the Government to plead the Cause of the Poor, having an Annual Salary allow'd them for this Purpose. And likewise, if some of our most necessary and useful Laws were reduced to a shorter Method, and better regulated, and were all written in the vulgar Tongue, in a plain intelligible Style, suited to all Persons Capacities. Moreover, if the great Charges attending litigi-



ous Suits, and the Prosecution of Criminals, were abated. By this Means the most difficult and important Parts of the Law would be render'd easy and practicable by all Persons, either high or low, rich or poor. Every Personal Injury would be repair'd, and every private Grievance redress'd, and strict Justice more impartially administred, and universally distributed throughout the Nation.



*F I N I S.*

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